

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE : MDL No. 1720(MKB)(JAM)  
FEE AND MERCHANT DISCOUNT :  
ANTITRUST LITIGATION : Civil No. 05-5075(MKB)(JAM)

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This Document Relates To: : RULE 23(b)(3) CLASS COUNSEL'S  
: MONTHLY REPORT REGARDING THIRD-  
: PARTY ENTITIES

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ALL ACTIONS. :  
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## **I. INTRODUCTION**

This is the seventh monthly report regarding third-party claims filers following the Court’s request.

Rule 23(b)(3) Class Counsel (“Class Counsel”) and Epiq continue to receive communications regarding third parties. This month, there were 15 new communications received by Epiq and several communications received by Class Counsel. Calls received via the toll-free number are tracked and reported to Class Counsel from Epiq. Class Counsel also directly receives calls and emails regarding third parties that are followed up on immediately. Additionally, Class Counsel regularly searches online using various keywords in an attempt to monitor what is a fluid situation.

In this report, Class Counsel describes current issues related to third parties.

## **II. UPDATES REGARDING THIRD-PARTY ISSUES**

In previous monthly reports, Class Counsel informed the Court that it was in discussions with a law firm that received both: (1) an attorney fee for its work performed on behalf of the class; and (2) is offering fee-based claims-filing services for members of the merchant class. Class Counsel and the law firm have reached an agreement in principle to resolve Class Counsel’s concerns, whereby the law firm will amend its disclosures to include the fact that it received a fee as one of class counsel and, for merchants it has already enlisted as third-party filing clients, proactively inform them of this fact, offering them a 30-day window in which to terminate their agreement with no recourse. Class members were sent notices and an exemplar was shared with Class Counsel. Class Counsel will continue to monitor the situation and alert the Court should any additional issues arise.

### **A. Conflict Notices**

As part of the claims process, on March 8, 2024, Epiq began sending conflict notices where more than one registrant has registered to file claims for the same Tax Identification Number (“TIN”)/Legal Entity. This conflict most often occurs when a third-party claims-filing company and a merchant have both registered to file claims for the same TIN. The conflict notices provide contact

information for the other registrant in conflict and requests that the parties resolve the conflict amongst themselves (where possible) and alert Epiq as to how it is to be resolved. In many instances, Epiq has received responses from merchants expressing confusion and annoyance upon learning about a prior agreement with a third-party filer that they do not remember or recognize. Class Counsel has contacted class members and third parties regarding these conflicts. More than 75 communications have been sent and in the vast majority of cases the third party agreed to step back and allow the class members to file on their own. Some third parties have yet to respond and regular follow-up emails have been sent. To the extent no resolution has been reached, those conflicts will likely go to the Special Master for resolution.<sup>1</sup> Where appropriate, Class Counsel will provide details to aid the Special Master.

### **III. NEW ISSUES**

#### **A. Additional Matters**

Class Counsel receives near daily emails and calls from both class members with questions regarding third parties as well as from third-party claims-filing company representatives with questions regarding the claims process. Additionally, Class Counsel conducts searches to determine whether various third parties are complying with the Court's orders.

In the past month, Class Counsel has been able to have corrections made to solicitations from a third party that failed to include the required disclaimer language. Conference calls were held and new, updated language was shared with Class Counsel. Most recently, a law firm's advertising material included several potentially misleading and/or highly confusing statements. Class Counsel provided proposed edits to correct the materials and they were implemented quickly. Further, a link on a news article that appeared to provide a link to the settlement website actually directed to the law firm's "sign-up" page. Working with the Court-approved public relations firm, we were able to have the link properly direct to paymentcardsettlement.com.

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<sup>1</sup> Other conflict notices have also issued, including conflicts between third-party filing companies and claims-buying entities as well as conflicts between claims-buying entities and merchants.

At this time, there are no disputes that require the Court's intervention.

#### **IV. OUTREACH TO THIRD PARTIES BY EPIQ**

As Class Counsel previously reported, since August 18, 2023, Epiq has been performing specific outreach efforts to known third-party claims filers. As of April 15, 2024, Epiq has been in communication with 232 third-party claims filers, law firms, and non-traditional bulk filers following the outreach that took place on August 18, 2023. Of those 232 third parties, Epiq has received client lists from 60 third-party claims filers which claim representation of 204,117 TINs. These client lists also include multiple rows for a single TIN, and multiple rows that lack TINs or have invalid TINs (alphabetic characters, too few or too many digits). Of those 60 third-party claims filers, Epiq has received 162,115 documents from 59 third-party claims filers. Several third-party claims filers have combined their documentation into a single .pdf that covers multiple clients, so the true number is likely higher than the current document count can substantiate. Work continues, including the development of processes to efficiently handle the expected increase in third-party claims.

#### **V. CONCLUSION**

Class Counsel will continue to apprise the Court regarding issues with third-party claims filers via monthly reports and will bring urgent matters to the Court's attention via letter or other means should the Court wish a different method to be used. The next monthly report will be filed on May 24, 2024.

DATED: April 26, 2024

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